

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-142/2014

Prishtinë/Priština, 3 February 2016

In the proceedings of:

S. D.

Appellant

vs.

Z. S.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Rolandus Bruin, Judges, on the appeals against the decisions of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/106/2011 dated 13 May 2011 (case file registered at the Kosovo Property Agency (henceforth: KPA) under number KPA36442), and no. KPCC/D/A/219/2013 dated 27 November 2013 (case files registered at the KPA under numbers KPA36439 and KPA36440, after deliberation held on 3 February 2016, issues the following

JUDGMENT:

1. The appeals of S. D., with case numbers **GSK-KPA-A-142/2014, GSK-KPA-A-143/2014 and GSK-KPA-A-144/2014**, are joined into one case under the case number **GSK-KPA-A-142/2014**;
2. The appeals of S. D. against the Decisions of the Kosovo Property Claims Commission no. **KPCC/D/A/219/2013** dated 27 November 2013 (case files registered at the KPA under numbers **KPA36439 and KPA36440**) and no. **KPCC/D/A/106/2011** dated 13 May 2011 (case file registered at the KPA under number **KPA36442**) are rejected as unfounded;
3. The Decisions of the Kosovo Property Claims Commission no. **KPCC/D/A/219/2013** dated 27 November 2013 and no. **KPCC/D/A/106/2011** dated 13 May 2011 are confirmed as far as they concern the claims nos. **KPA36439, KPA36440 and KPA36442**.

Procedural and Factual background

1. On 7 May 2007, Z. S., (henceforth: the Appellee) filed three individual claims at the Kosovo Property Agency (KPA), seeking ownership right over 1/3 ideal part of the parcels:
 - number 1207, cadastral zone Jasenovik/Jasenovik, Novobërdë/Novo Brdo with a surface of 4 Ar and 38 m²,
 - number 1202, cadastral zone Jasenovik/Jasenovik, Novobërdë/Novo Brdo with a surface of 9 Ar 90 m² and
 - cadastral parcel number 1203, cadastral zone Jasenovik/Jasenovik, Novobërdë/Novo Brdo with a surface of 7 Ar and 68 m² (henceforth all together indicated as: the claimed properties).
2. In the claims, she stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in 1998/99, indicating 12 June 1999 as the date of loss.
3. To support her claims, she submitted to the KPA the following documents:
 - Possession list no. 27 issued by the Directorate for Cadastre, Geodesy and Property of the municipality of Novobërdë/Novo Brdo, dated 18 October 2005, indicating that the claimed properties were registered under the name of S. D.;

- The Inheritance decision T. No. 249/89 dated 10 January 1990 wherewith the claimant is announced the owner to 1/3 of the claimed properties as inheritor after the death of S. D. on 15 September 1987;
- The ID card issued by the competent authority on 30 August 2001.

From other documents that Appellee submitted and from documents submitted by S. D. (henceforth: the Appellant), follows that S.D. was the son of S. D. and that S. D. was married to J. D. and that S.D. had two daughters and one of them is Appellee.

4. According to the Possession List no. 27 dated 8 January 2011 from the records of the Centre for Cadastre, Geodesy and Property of the Municipality of Novobërdë/Novo Brdo, the cadastral parcels claimed by the claimant, located at the cadastral zone of Jasenovik/Jasenovik, are registered under the name of S. D, as follows:

Number of appeal and of KPA claim number	Data regarding the claimed parcel
GSK-KPA-A-142/14 (KPA36442)	Parcel no. 1207, at the place called "Padina", 5 th and 7 th class field with the surface of 0.29.34 and 0.04.38 ha
GSK-KPA-A-143/14 (KPA36439)	Parcel no. 1202, at the place called "Oborishte", house/building with the surface of 0.09.90 ha and two pieces of 00.01.93 and 00.05.00 ha.
GSK-KPA-A-144/14 (KPA36440)	Parcel no.1203, at the place called "Oborishte", 5 th class field with the surface of 00.07.78 ha

5. The KPA notified the claim KPA36442 on 14 January 2008 and later, after concluding that this first notification was not done properly, on 30 August 2010 through publication in the official KPA Notification Gazette No.7. After this notification nobody participated on the first instance proceedings.
6. The claim under KPA36439 was notified on 15 January 2008 and on 18 May 2008. KPA found it occupied by the Appellant who alleged to have a property right on that parcel.
7. KPA notified the claim under KPA36440 on 1 July 2008 and 2 March 2010. Also to the parcel in this claim the Appellant claimed a property right.

8. KPA ascertained that the properties in the claims KPA36439 and KPA36440 were identified properly through orthophotos and GPS coordinates.
9. On 25 August 2008 the Appellant responded on the claims with the numbers KPA36439 and KPA36440 and stated that he is a cousin to the Appellee and that he is currently using the parcels in those claims and that they are inherited properties from the deceased S.D., his grandfather. In addition, he stated that he challenged the KPCC's decision regarding another claim with number KPA36452 and that the Supreme Court adopted his appeal and rejected that claim of Z. S.
10. To support his allegations, the Appellant provided the following:
 - A Statement in writing dated 14 April 2014;
 - Copy of the lawsuit filed by the Appellant with the Municipal Court in Prishtinë/Priština, against the Appellee for obstruction in possession;
 - A Deed dated 16 April 1938;
 - The Judgment of the Municipal Court in Prishtinë/Priština C. No. 1935/08 dated 25 May 2010 wherewith the claim of the Appellant in the fore mentioned lawsuit is rejected;
 - An ID card and death certificates proving the family relations with his grandfather S. D., his uncle S. D., J. D., the wife of S. D., the Appellee and the Appellant.
11. According to the KPA verification report dated 20 January 2011, the possession list no. 27, the Ruling on inheritance and the Judgment of the Municipal Court in Prishtinë/Priština, were verified positively.
12. The KPCC decision no. KPCC/D/A/106/2011 dated 13 May 2011, confirmed that the Appellee has proven the ownership of 1/3 ideal part of the claimed parcel in the claim KPA36442 based on the documents submitted by Appellee and after establishing that no one participated in the procedure at the first instance.
13. The KPCC in its decision no. KPCC/D/A/2019/2013 dated 27 November 2013 regarding the claims KPA36439 and KPA36440 confirmed that the Appellee (also) had proven her ownership of 1/3 ideal part of the claimed properties in that claim. KPCC also reasoned that the Appellant did not prove that the Ruling on inheritance was not valid and that the Appellant did not provide evidence for his claim for ownership.

14. The KPCC decision no. KPCC/D/A/106/2011 dated 13 May 2011 (case file registered at the KPA under number KPA36442) was served on Appellee on 14 October 2010. The Appellant filed the appeal against this decision on 14 April 2014.
15. The KPCC decision related to the claims KPA36440 and KPA 36439 was served upon Appellant on 18 March 2014 and on the Appellee on 22 May 2014. The Appellant filed an appeal against this decision on 10 April 2014.
16. The Appellee was served with the appeals but did not send a response to the appeals.

Allegations of the Appellant

17. The Appellant alleges that the KPCC decisions do not consider the fact that the Appellant has filed the lawsuit at the Municipal Court of Prishtinë/Priština and after the rejection of his claim before that court that he filed an appeal against the decision of the Municipal Court and that this could change the relation of the co-ownership between the parties.

Legal reasoning

Admissibility of the appeals

18. The appeals against the KPCC decision no. KPCC/D/A/219/2013 have been filed within 30 days after the KPA served that decision on the Appellant as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law No. 03/L-079) and are admissible.
19. The Appellee did not participate in first instance proceedings on claim no. KPA36442. The Supreme Court considers that the publication of that claim through the Official KPA Gazette is, according to the established case law of the Supreme Court, not a sufficient effort made by KPA to notify the claim on interested parties. That Appellee is an interested party to this claim to, is not argued. As the Appellant was not notified properly of the claim before KPA/KPCC the fact that he did not participate in the proceeding before the KPCC does not prevent his participation in the second instance procedure. Furthermore there is no indication that the Appellant filed the appeal later than thirty days after he became aware of the first instance decision of KPCC on this claim. So the Supreme Court considers the

appeal also admissible for the decision of KPCC No. KPCC/D/A/106/2011 dated 13 May 2011 (case file registered at the KPA under number KPA36442).

Joining of appeals

20. According to Section 13.4 of Law No. 03/L-079, the Supreme Court can decide on joining or merging of appeals, when such joining or merger of claims has been decided by the KPCC pursuant to Section 11.3 (a) the law. This section allows the KPCC to take into consideration the joining or merging of claims in order to review and render decisions when there are common legal and evidentiary issues.
21. The provisions of the Law on Contested Procedure (Law No. 03/L006) are *mutatis mutandis* and as far as not otherwise provided applicable in the proceedings before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. Article 408.1 as read with Article 193 of the Law on Contested Procedure provides for the possibility of joining of appeals through a ruling if that would ensure court effectiveness and efficiency of the case.
22. In the text of the appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are the same in all three cases. Only the cadastral parcels are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning in deciding on the claims is in essence the same.
23. The appeals registered under the numbers GSK-KPA-A-142/2014, GSK-KPA-A-143/2014 and GSK-KPA-A-144/14 are therefore joined in a single case under the number GSK-KPA-A-142/14.

Merits of the appeal

24. The Supreme Court of Kosovo notes that based on the provided documentation from the Appellant and the verification report of the KPA, the KPCC evaluated correctly that the loss of possession over the claimed properties was a result of circumstances related to the armed conflict in 1998-1999. The Appellant stated, provided with a statement of her mother that they left the claimed properties at the end of the war for reasons of security in combination

with medical problems of her mother. Furthermore, the Appellant admitted that he in that time gained the keys to the claimed properties to look after the properties, but that he took possession of the claimed properties in 2000.

25. Furthermore KPCC decided correctly when it confirmed the ownership of Appellee. KPA verified the Ruling on inheritance positive. This document proves the allegations of Appellee on her ownership right to the claimed properties. On the other hand KPCC decided correctly that the Appellant did not prove any property right to the claimed property.
26. The Supreme Court found that the KPCC in its decision KPCC/D/A/219/2013 dated 27 November 2013 in paragraph 48 and 66-88 provided the reasoning that the Appellant proved based on the submitted documents that she is the owner of 1/3 of the claimed property, and these documents were verified positively.
27. In paragraph 67 of that decision is specified that the Appellant was Appellee's cousin and that the claimed properties were inherited from their grandfather. In this regard, the Appellant initiated the procedure at the Municipal Court of Prishtinë/Priština to have established that he is inheritor to his grandfather. In the first instance judgment the claim of the appellant is rejected. Therefore he did not provide evidence that the Ruling on inheritance, that was submitted by the Appellant, is invalid. That the proceedings in appeal against that judgment are not concluded yet, does not lead to the conclusion that his allegation on the invalidity of the Ruling on inheritance is right.
28. The Appellant does not deny the dispute regarding the inheritance issue between the cousins but he could not prove with any evidence that he has any right over the claimed properties. He requests from the Supreme Court to establish that the KPCC did not consider that the proceeding before the court in appeal is not concluded yet. This request cannot lead to another decision on this appeal before the KPA Appeals Panel of the Supreme Court, because there is no provision in the law that obliges KPCC to wait for such a decision.
29. Consequently, the Supreme Court finds that the KPCC decision does not involve violations of material law, as otherwise alleged by the Appellant. The Supreme Court concludes that Appellant did not indicate any real ground for a successful appeal by the Appellant.
30. The Supreme Court finds that the KPCC issued a correct decision, based on a thorough and accurate procedure. Therefore, the Supreme Court did not find any violation of the material law nor an erroneous or incomplete determination of facts. The Supreme Court finds the appeal unfounded.

31. From the foregoing and pursuant to Article 13.3 (c) of Law no. 03/L-079, the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice:

32. Pursuant to Section 13.6 of Law UNMIK 2006/50, as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar